

Berfield and David Gardner various possible allocations among the five permits. Hence, Sandifer and David Gardner knew when they reviewed the Red Lion certification that the specified figures did not reflect Raystay's actual expenses.

731. Additionally, the record leaves little doubt that Raystay knew or should have known that its allocations were improper. First, Grolman had made clear to Sandifer that Raystay could only recover its documented out-of-pocket expenses in connection with the sale of the unbuilt permit. (§404 above.) Moreover, while researching Commission authority on the subject, Berfield had read the Integrated case, in which an applicant had employed a pro rata allocation to develop expense figures for which it was seeking reimbursement. (§§422-23 above.) Although the Review Board in that case approved the applicant's pro rata allocation, this was only after the applicant established through sworn affidavits that the claimed expenses had actually been incurred in connection with the particular application at issue. Integrated, supra, 5 RR 2d at 726 (noting that a second affidavit had been submitted by counsel alleging "that the figure of \$8,664.84 had in fact been expended in connection with the Boston application.") Thus, while Integrated could be construed as approving use of a pro

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115/ (...continued)

(§416 above.) Only the record establishes that he did refer to Hoover's invoice when making his allocations, a fact that entirely discredits his justification for the one-third allocation.

rata allocation, it could also be construed to require a showing that the expenses for which an applicant is seeking reimbursement were incurred in connection with the particular application at issue.

732. Whichever way Integrated is read, it does not support what Berfield did. When determining the Red Lion expenses, Berfield made neither a pro rata allocation (which is what he understood Integrated had approved) nor a calculation of expenses specific to Red Lion. Instead, he manufactured Raystay's "expenses" by employing two allocation "theories" of his own design, one for the legal fees (allocating one-half the total) and one for the engineering (allocating one-third the total). More fundamentally, he ignored a key point in Integrated, namely that the applicant there had disclosed that it was making an allocation among three applications, which allowed the Commission to assess its claim. Raystay, in contrast, gave the Commission no hint that its asserted "costs" were derived from allocation theories and were not actual costs for the Red Lion permit. To the contrary, it told the Commission that the figures listed -- which were specified to the last dollar -- were Raystay's precise costs in obtaining "the construction permit being assigned," i.e., the Red Lion permit. (§388 above.) The Commission was thus induced to approve the full \$10,000 price without questioning the propriety of Raystay's accounting, which overstated Raystay's costs by more than \$5,000. (§421 above.)

**b. Raystay's False Certification Is Disqualifying**

733. It is axiomatic that "applicants before the FCC are held to a high standard of candor and forthrightness." WHW Enterprises, Inc. v. FCC, 753 F.2d 1132, 1139 (D.C. Cir. 1985); Character Policy Statement, supra, 102 FCC 2d at 1179, 1183, 2210-11. Thus, the Commission has disqualified applicants for withholding material information from the Commission, WWOR-TV, Inc., 7 FCC Rcd 636 (1992), affirmed, Garden State Broadcasting v. FCC, 996 F2d 386 (D.C. Cir. 1993), and for making misstatements designed to create a misleading impression. RKO General, Inc. (WNAC-TV), supra, 78 FCC 2d at 98. Here, Raystay did both these things when it (a) falsely stated that David Gardner was familiar with the Red Lion expenses, (b) falsely implied that the listed expenses belonged to the Red Lion permit alone, and (c) failed to disclose that its seemingly precise expense figures were really manufactured "guesstimates" that had been derived through allocations among multiple permits. Raystay's plain motive was to avoid Commission scrutiny of its expense figures so it could secure the full \$10,000 price that Grolman was willing to pay for the permit. Indeed, Raystay's concern that the FCC might disapprove the full \$10,000 sale price caused it to request a change in its contract with Grolman to provide that the deal could be terminated -- at Raystay's option -- if the FCC failed to endorse the full purchase price. (§400 above.) This modification implemented the decision Raystay had

made during its negotiations with Grolman that \$10,000 would be the floor price it would accept for the permit. (§389 above.)

734. Raystay is not excused by the fact that the certification was prepared by counsel Lewis Cohen, allegedly at the last minute request of David Gardner, after Berfield had left for vacation with the understanding from David Gardner that Grolman's counsel would prepare the document.<sup>116/</sup> Regardless of how the certification was prepared, it was reviewed both by David Gardner and by Sandifer before it was filed. (§428 above.) Neither of them sought to correct the patent misstatements. David Gardner knew that he was not "familiar" with Raystay's expenses for the Red Lion permit. Moreover, both he and Sandifer knew that the expense figures did not reflect Raystay's actual expenses in obtaining "the construction permit being assigned." (§428 above.) Yet they permitted the certification to stand without disclosing the critical fact that allocations had been made to produce the figures for which Raystay was seeking reimbursement.

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<sup>116/</sup> David Gardner's testimony that he did not recall discussing the expense figures with anyone before receiving the certification and that he did not recall thinking about using counsel other than Cohen & Berfield to prepare the certification (§§426-27 above) belies this scenario, as do the facts that (a) David Gardner was relying on Cohen & Berfield to prepare earlier expense affidavits in connection with Raystay's proposed sale to Trinity (§396 above); (b) Sandifer had received a letter from Grolman specifically stating that Raystay would be responsible for documenting its expenses to the FCC (§427 above); and (c) Grolman's counsel had reiterated that obligation to David Gardner in his letter of December 12. (§400 above.)

735. Likewise, the circumstances under which the certification was prepared do not exculpate Berfield. Although he did not prepare the certification, he learned upon returning to his office the day before the Red Lion application was filed that Grolman's counsel either had filed or would be filing the application. (§429 above.) He thereupon reviewed the expense certification, confirmed that it used the figures he had calculated, and noticed the absence of any disclosure that those figures were the product of allocations among multiple permits. Although he knew that the listed expenses did not pertain just to "the construction permit being assigned," and although he was familiar with Integrated, he permitted the false and misleading certification to be filed (or remain on file uncorrected).

**c. Raystay's Misconduct Must Be Attributed to George Gardner**

736. As in the case of Raystay's LPTV extension applications, George Gardner must be disqualified for Raystay's malfeasance in connection with the Red Lion expense certification. Even assuming that he had no specific knowledge of the misstatements and omissions in the Red Lion certification, as Raystay's President and sole voting owner he is accountable for the FCC-related misconduct of his agents Sandifer, David Gardner, and counsel Berfield, each of whom knew that the certification contained false statements and withheld material information. See, Character Policy Statement, supra, 102 FCC 2d

at 1218; Continental, supra, 17 FCC 2d at 486-87; Prattville, supra, 4 FCC 2d at 563; United, supra, 60 FCC 2d at 817.

737. Moreover, George Gardner had a personal obligation to review the Red Lion certification -- an obligation he ignored. When the certification was filed, he was under "heightened scrutiny" due to his disqualification in the RKO Fort Lauderdale proceeding. He was also bound by his pledge to "carefully review any ... applications and statements to ensure that they fully and accurately disclose any pertinent facts." (§277 above.) Indeed, Gardner acknowledged that in view of that pledge he would have reviewed and signed the Red Lion assignment application if he had been in his office when the application was prepared. (§430 above.)

738. The fact that George Gardner was away when the expense certification was prepared and signed does not absolve him from responsibility. He was fully aware of Raystay's plan to sell the permit to Grolman; he had approved the \$10,000 sale price; he had instructed Sandifer to proceed with the sale after negotiations with Trinity were terminated; he knew that an application would have to be filed with the Commission seeking approval of the sale; he had unlimited access to all of Raystay's records, including expense records relating to the permit; and he was accessible to his office at all times while he was away. (§§432-33 above.) Therefore, had he wished, he could have easily made sure that he saw the materials before

they were filed. By doing nothing, he abdicated his responsibility to ensure the accuracy and candor of Raystay's filing.

739. Aggravating Gardner's culpability is the fact that he could have reviewed the certification while it was pending before the FCC. Nearly three weeks before the Red Lion sale was approved, he signed a Glendale amendment reporting the filing of the Red Lion assignment application. (§434 above.) Thus, even assuming that he was unaware of the application when it was filed, he learned of it well before it was granted. Nonetheless, George Gardner made no effort to comply with his full disclosure pledge and his fundamental obligation to assure the continuing accuracy and completeness of information furnished by Raystay to the Commission.

740. Gardner's failure to honor his full-disclosure pledge is not justified by the fact that he had delegated responsibility for the application to Sandifer. Nor is it justified by reliance on counsel. Under cross-examination, Gardner conceded that he was not aware of any of the work Sandifer or counsel had performed on the application, nor was he aware if either of them had even reviewed the application before it was filed with the Commission. (§§435, 437 above.) Thus, he had absolutely no reason to think that Raystay's filing satisfied his affirmative pledge to "fully and accurately disclose" all "pertinent facts" to the Commission. In these circumstances -- where the expense certification was patently misleading; Sandifer, David Gardner

and Berfield knew it contained misstatements and omitted material information; George Gardner had documentation available which plainly revealed the certification's falsity; and he had a clear duty and the opportunity to ensure the accuracy of that filing -- Gardner's serious breach of that obligation cannot be excused. See Sea Island Broadcasting Corp. of S.C., supra; Golden Broadcasting Systems, Inc., supra; Continental Broadcasting, Inc., supra; Radio Carrollton, supra; Prattville Broadcasting Co, supra; United Broadcasting Co. of Florida, Inc., supra; RKO General, Inc. v. FCC, supra.

741. George Gardner's wholesale abdication of his responsibility to ensure the accuracy of the Red Lion expense certification demonstrates that neither he nor Glendale can be relied upon in dealing with the Commission. "Historically, as well as currently, the Commission has considered the twin elements of truthfulness and reliability as fundamental character traits necessary to operate a broadcast station in the public interest." KOED, Inc., 3 FCC Rcd 2601, 2606 (¶25) (Rev. Bd. 1988). Reliability includes "the propensity to act consistent with one's representations," Character Policy Statement, supra, 102 FCC 2d at 1195, an essential trait if the Commission is to have any assurance that an applicant will be forthright in its future relations with the agency.

742. The Red Lion expense certification represents the fourth instance in which George Gardner and/or a licensee under



his control has made false and misleading statements to the Commission. First, in the RKO Fort Lauderdale proceeding, George Gardner was found to have lacked candor in his representations to the Commission. Consequently, the Commission placed him under "heightened scrutiny" and forewarned that any further FCC-related misconduct would carry with it grave consequences. Now, the record demonstrates that he and Raystay made false and misleading statements in LPTV extension applications in December 1991 and July 1992, and also that Raystay misrepresented facts and lacked candor in the Red Lion expense certification filed January 1992. This pattern of conduct negates any expectation that George Gardner will be reliable in the future, and shows that he cannot be entrusted with the broadcast license he seeks in this proceeding. Accordingly, Glendale must be disqualified.

### **C. Comparative Issue**

743. The most recently decided renewal cases have established that a licensee's entitlement to a renewal expectancy must be evaluated according to a template that includes five criteria:

- Criterion 1: The licensee's efforts to ascertain the problems, needs, and interests of its community;
- Criterion 2: The licensee's programmatic response to those ascertained needs;
- Criterion 3: The licensee's reputation in the community for serving the problems, needs, and interests of the community;

Criterion 4: The licensee's record of compliance with the Communications Act and FCC rules and policies;

Criterion 5: The presence or absence of any special effort at community outreach or towards providing a forum for local self-expression.

Fox Television Stations, Inc., 8 FCC Rcd 2361, 2366-67 (Rev. Bd. 1993), recon. denied, 8 FCC Rcd 3859 (1993), modified, 9 FCC Rcd 62 (1993); Metroplex Communications, Inc. (WHYI-FM), 4 FCC Rcd 8149, 8151 (Rev. Bd. 1989), modified, 5 FCC Rcd 5610 (1990); Seattle Public Schools, 4 FCC Rcd 625, 637 (Rev. Bd. 1989). Accordingly, TBF's record of serving the Miami community during its License Term should be evaluated according to the "proper yardstick." Fox Television Stations, Inc., supra, 8 FCC Rcd at 2368.

**1. Licensee's Efforts To Ascertain the Problems, Needs, and Interests of the Community (Criterion 1)**

744. The Review Board has held that "[p]reeminent in our survey of the licensee's performance is its efforts to periodically take the pulse of the community." Metroplex Communications, Inc. (WHYI-FM), supra, 4 FCC Rcd at 8151. The evidence in this case shows that WHFT expended a great deal of effort and time to regularly, conscientiously, and thoroughly ascertain how the residents of Miami and the service area viewed the problems, needs, and interests confronting the community. The Public Affairs Director was responsible for ascertainment during the License Term. (¶455 above.) It was his or her responsibility

to review local and national newspapers and news magazines to determine what they identified and treated as a problem or issue in the service area. (§456 above.) The public affairs programming of all other radio and television stations was reviewed as well to determine what problems and issues other stations were addressing. Even the agenda of the Miami City Council was reviewed, as was the occasional viewer letter which mentioned a problem. (Id.) In addition to these sources, volunteers who staffed the Prayer Line were instructed to interview at least 25 callers each calendar quarter, elicit the caller's opinion of the three most important problems, needs, and interests in the community, and complete a form after each interview. (§§ 457, 460 above.) Finally, the PA Director systematically interviewed 25 community leaders by telephone each calendar quarter to determine their views of the problems and issues facing the community. (§§ 458, 460 above.) Station policy in this regard was regulated by a Station Manual that contained necessary forms and community leader interview sheets. (§455 above.) The PA Director followed established procedures during telephone interviews, which ensured that interviewee was actually a community leader. (§458 above.)

745. A list prescribed 19 different categories of organizations or interests that had to be represented in the community leader interviews during each calendar quarter, and the PA Director completed a standard form interview sheet for each such interview. (Id.) The race or ethnic group of each community

leader interviewed was also recorded to ensure that a sample of all races and ethnic groups in the service area were interviewed each calendar quarter. (§459 above.) The PA Director kept a running count on a tally sheet of the problems mentioned by all sources consulted: letters from viewers; news stories and programming on other radio and television stations; articles in local newspapers and national news magazines; the Miami City Council agenda; at least 25 interviews each quarter with callers to the Station's Prayer Line; and at least 25 interviews each quarter with leaders in Miami and the station's service area. (§460 above.)

746. Using this information the PA Director prepared two reports each calendar quarter. One report, called the "Preliminary Report," was compiled after the first month of each quarter, when roughly seven to nine community leader interviews and an equivalent number of Prayer Line caller interviews would have been completed. (Id.) A list was prepared of the five most mentioned problems or issues (six if there were a tie), providing a snapshot of what problems were considered most important by the community. (Id.) A second and final report was prepared immediately after the end of the calendar quarter. The PA Director prepared another count of the problems mentioned by all sources consulted. (§461 above.) A list of the top five (or six) problems, determined by the number of mentions, was then sent to the Trinity Public Affairs Department, along with the community leader ascertainment sheets. (Id.) Also included

were the continuity notes for all local programs determined to be responsive to the most salient ascertained problems. (Id.) The Trinity Public Affairs Department would review the list of the problems identified for the Miami service area and send WHFT a list of the nonentertainment programs broadcast on the network which were responsive to the top 10 problems identified by all stations affiliated with Trinity, including a title, program description, date, and time of broadcast. (Id.) When a Miami service area problem was not on the network top 10 list of problems, WHFT would request and receive information on programs broadcast responsive to that problem. (Id.) The PA Director would combine the notes and continuity prepared by WHFT for its local programs with the program descriptions provided by the Trinity Public Affairs Department, and the resulting Quarterly Report would be placed in WHFT's public file by the 10th day after the end of each calendar quarter. (Id.)

747. WHFT's method of ascertaining the community's needs was consistent, in that it did not vary from quarter to quarter; systematic, in that it always followed the same procedures, regardless of the identity of the PA Director; extensive, in that it consulted a number of sources of information; and representative, in that it consulted a broad range of sources required that representatives of 19 different categories of organizations and interests and a fair representation of the racial and ethnic group in the community be included in its community leader interviews. There can be no question that

WHFT's ascertainment methods fully reflected the "racial, ethnic, cultural and geographic diversity" of Miami and the service area. Fox Television Stations, Inc., supra, 8 FCC Rcd at 2369-70.

**2. Licensee's Programming Responsive to Ascertained Problems, Needs, and Interests (Criterion 2)**

748. The Commission has stressed that "the adduction of community issues is merely the preliminary step; the associated criterion is whether, and how, the licensee translated its ascertainment into on-air performance." Fox Television Stations, Inc., supra, 8 FCC Rcd at 2375. There must be some "nexus between issue identification and responsive programming." Id. Once again, the record shows that WHFT had a remarkable system for ensuring that both its network and its local programming were responsive to issues identified as important to Miami area residents, and that the station produced and broadcast substantial amounts of issue-responsive programming targeted to treat the most important issues in the community.

749. With respect to local programming, for much of the License Term the PA Director, who was responsible for ascertainment, would prepare a continually updated list of the most important problems. That list was regularly shared with the Production Manager. (§462 above.) The Production Manager, in turn, planned the program topics and scheduled guests for WHFT's public affairs and issue-responsive local programs such as

Feedback, South Florida Public Report, and Miami Praise the Lord. Program guests and topics were chosen based on the problems ascertained. (Id.)

750. For more than two years of the License Term, when Robin Downing was both the Public Affairs Director and the Production Manager, the link between ascertainment the production of responsive programming was absolutely direct. (Id.) As the Public Affairs Director, she conducted the ascertainment. As Production Manager she chose the discussion topics and scheduled the guests on Feedback and South Florida Public Report, and the roughly one-half of Miami Praise the Lord's guests who were scheduled to discuss a local problem or issue. She would ensure that the top five problems identified by the ascertainment were covered in at least four programs each quarter and that other problems identified received some program response. (§§462, 464 above.)

751. The Trinity network had also evolved a remarkable system for ensuring that the network programming would address the local needs of WHFT and other affiliated stations. (§466 above.) As noted above, the community leader interview sheets and both the preliminary and final list of problems for WHFT were sent to Trinity's Public Affairs Department each quarter. Throughout the License Term, a full-time Trinity employee, Lindee Dressler, reviewed the lists received from WHFT and other affiliated stations. She then chose topics for discussion and

scheduled guests on much of the Trinity network's nonentertainment programming, such as Joy, A Date With Dale, Doctor and the Word, and Calling Dr. Whitaker. (§§474, 475 above.) Ms. Dressler also reviewed and approved the topics and guests chosen for programs such as A Call to Action and Treasures Out of Darkness. (§§476, 477 above.) The choices of topics and guests were designed to respond to the issues ascertained by Trinity's affiliated stations. (§§467, 470 above.) Ms. Dressler instructed guests to discuss an issue from both a local aspect, if that were appropriate, and a national viewpoint. (§470 above.) Each calendar quarter she ensured that at least one guest was scheduled to treat each problem on Miami's list. (§471 above.)

752. Ms. Dressler also had a role in the network's choice and scheduling of children's programming. As part of her job she received calls from viewers who commented on the content and scheduling of network's children's programming. Those views influenced both the schedule and content of children's programming during the License Term. (§480 above.)

753. The extraordinary steps taken by WHFT to ensure that its ascertainment generated issue-responsive programming did, in fact, result in programming that consistently treated the community's needs and interests. Moreover, WHFT's issue-responsive programming was broadcast at times when viewers were in the audience. For example, WHFT broadcast Feedback, a one-hour program, at times between 9:30 a.m. and 12:30 p.m. on



Mondays or Thursdays, and rebroadcast the program once or twice a week. (§498 above.) Feedback, a panel show moderated for most of the License Term by an African-American host, Harold Ray, focussed on a discussion of an issue or problem of concern in the community. (§499 above.) During the License Term Feedback treated every significant problem identified in the ascertainment, including: AIDS; the cost of living and inflation; senior citizens; crime; drug and alcohol abuse and addiction; and others as shown in the Station's Quarterly Reports. (§499, 500 above.) During a short portion of the License Term a public affairs program called South Florida Public Report was substituted for Feedback, and it also treated the community's problems, as did, for a brief time, a special public affairs segment that was inserted in Miami Praise the Lord. (§501 above.)

754. Another local program that consistently treated local problems and issues was Miami Praise the Lord, a two-hour show of which approximately one and one-half hours were devoted to interviews. Miami Praise the Lord was always broadcast at 11:30 a.m. on Tuesday or Friday. As noted above, roughly half the guests on Miami Praise the Lord were scheduled to discuss an issue of concern to the community, and the program regularly discussed issues of local and national importance that were responsive to Miami's ascertained needs. (§502 above.)

755. There is considerable evidence that Miami Praise the Lord and Feedback also addressed a very significant local problem simply by virtue of their format and philosophy. One of the Miami area's most pressing problems was the tension between different racial and ethnic groups. (§504 above.) Miami Praise the Lord attempted to treat this problem by featuring a rotating staff of pastors and their wives as program hosts, at least two-thirds of whom at any given time were minorities. Two were African-Americans who pastored large minority churches, and two were Hispanic pastors. (Id.) During most of the License Term the host of Feedback was Harold Ray, an African-American. WHFT took pains to ensure that members of minority groups were well represented among the guests of the program as well. (Id.)

756. Several of the public witnesses testifying for WHFT attested to this aspect of WHFT's program service. Dr. Franklin Jacobs, for example, testified that WHFT was a "healing influence in a divided community," and that minorities such as African-Americans and Hispanics were well represented on its programming. (§550 above.) See also, the testimony of Rev. Lonnie Tolbert (§530 above), Jack Thompson (§562 above), and Pastor James Woods (§515 above), all of whom attested to the representation of minorities on WHFT's programming and its impact on the community. Pastor Woods, in particular, lauded WHFT for being particularly responsive to the needs of minority members of the community. (Id.) Likewise, Pastor Tolbert testified that during the License Term WHFT took particular care

to interview and touch bases with leaders of the African-American community, and with anyone "on the front line of coping with the anger in the African-American community" following the Rodney King trial. (§530 above.) Another local witness lauded WHFT for a fine Feedback program on youth gangs, noting that the program not only included information on the problem, but also discussed the telltale signs that mark a child as a gang member. The program also provided an exhaustive listing of school agencies, support groups, and the like from which parents could obtain further information or help. (§544 above.)

757. Ms. Dressler's efforts to ensure that network programming responded to Miami's needs also bore fruit in the amount of network programming responding to those needs. For example, Joy was a one-hour interview program broadcast between 6:00 and 8:00 a.m. daily during the License Term which regularly treated Miami area problems of: AIDS; crime; alcohol and drug addiction; health and nutrition; the economy; traffic and transportation; and others identified in WHFT's Quarterly Reports. (§505 above.) Likewise, the network Praise the Lord program, which aired during evening prime time, often treated Miami area problems, such as: health care; AIDS; alcohol and drug addiction; crime; education and schools; and others as identified in WHFT's Quarterly Reports. (§506 above.)

758. Other network programs that treated Miami area problems included: Calling Dr. Whitaker, which often dealt with

issues such as alcohol and drug addiction, pollution, and the environment; A Call To Action (education and schools); Treasures Out of Darkness (drug and alcohol addiction, spousal abuse, single parenthood, crime); The 700 Club (drug and alcohol abuse, crime, cost of living/inflation, education and the schools); Doctor and the Word (aging, nutrition, the effect of pollution on the body); A Date With Dale (crime, alcohol and drug addiction, child abuse); and Why Wait, a children's program dealing with issues such as AIDS, drugs, and youth and family issues. (§507 above.)

759. The public witnesses cited different facets of WHFT's service as serving the community's needs. Many public witnesses attested to WHFT's coverage of particular issues as being more substantive and of greater depth than that provided by other stations in the service area. For example, Dr. Walter Anders, the Assistant Director of Dade County's Department of Human Resources, was particularly impressed with the depth and sophistication of WHFT's coverage of the welfare issue on a program in which he participated, and he noted that no other station, except one run by the county itself, had provided as substantive an examination of the problems and myths that surround welfare, and as thorough an explanation of how and where one applies for welfare benefits. (§516 above.) Likewise, following her appearance on Feedback, Elizabeth Anne Wilson noted that no other station in the service area shows as much interest in family issues. (§511 above.) Ruther Carter

described the coverage of the problem of crack babies by other television stations as merely showing pictures of the children, while WHFT covered the problem in much greater depth and discussed the complexity of the problem. (§535 above.) Pastor Michael Lewandowski noted that no other television station in the Miami market except WHFT had broadcast a program on the problems of Viet Nam vets, or the community resources available to help troubled vets. (§542 above.) Two different representatives of Crimestoppers, which is critically dependent on media publicity for its success, testified that only on WHFT were they given an opportunity to explain the program's purposes. (§§524, 543 above.) And two public witnesses testified that they had never seen a program on important First Amendment issues on other Miami area television stations. WHFT gave extensive coverage to First Amendment issues, particularly hate crime legislation (§522 above), and permitted First Amendment issues to be discussed at length so that the depth and complexity of the issues could be explored (§560 above).

760. Finally, the record is replete with evidence that there was a direct link between WHFT's broadcast of issue-responsive programming and viewers responding to that programming by seeking help. Rev. Tolbert, for example, testified that following an appearance on WHFT he received a number of calls from drug and alcohol addicts, and that after one appearance no fewer than 10 people enrolled in his rehabilitation program, several of whom are still in remission. (§529 above.) Mrs.

Carter remembers a "mad-rush" of people who called for help following her WHFT appearance, including several crack-addicted mothers. (§536 above.) Pastor Lewandowski, Richard Dodge, and David Vega likewise attested to the fact that many of the residents in their drug and alcohol rehabilitation programs enrolled as a direct result of information broadcast or an invitation made on a WHFT program. (§§540, 554, 568 above.) Earnest Raymond Hughes testified that he received "dozens" of calls from people who entered his Graceworks program or started a drug and alcohol addiction rehabilitation program following an appearance on WHFT, approximately 50 percent of whom were members of minority groups. (§577 above.) Following his appearance on a WHFT program Rev. Cleveland Bell received calls from people who wanted help for their drug addicted children (§531 above), and Pastor Gilbert Rodriguez received calls from people who were addicted and needed help as well as their loved ones (§518 above). Dr. Robert Barnes received a large number of calls from people who wished assistance with their family problems following his appearance on WHFT. (§527 above.) Following an appearance on WHFT several gang members and parents enrolled in Barbara Wade's program to stop gang violence, and in her opinion violence actually decreased following the WHFT broadcast. (§588 above.)

761. In each of these instances, not only did WHFT provide issue-responsive informational programming that treated needs like crime and alcohol and drug addiction in an abstract sense,

but the programming had a direct, immediate and sometimes life saving impact on viewers' lives. In a real sense WHFT programming "treated" community problems by exerting a direct impact on viewers: drug and alcohol addicted viewers who enrolled in a treatment programs; troubled individuals who received counseling and help; even gang members who attempted to opt out of their violent lifestyle -- all as a direct result of WHFT public service programming.

762. Since 1960, children's programs have been listed as one of the 14 "major elements usually necessary to meet the public interest, needs and desires of the community." En Banc Programming Inquiry, 44 FCC 2303, 2315 (1960). This special obligation to treat the needs of young viewers was restated by the Commission as follows: "[b]ecause of their immaturity and their special needs, children require programming designed specifically for them ..." Children's Television Report and Policy Statement, 50 FCC 2d 1, 5 (1974). "Station's license renewal applications should reflect a reasonable amount of programming which is designed to educate and inform [children] ... not simply to entertain." Id. at 6. Children's programming should also provide some programming for pre-school as well as school age children. Id. at 7. Congress implemented these objectives with the Children's Television Act of 1990, and beginning with renewals filed during the next cycle after WHFT's, licensees must document their children's programming efforts. The record evidence shows that WHFT, throughout its

License Term, anticipated the Children's Television Act by providing the children in its service area with much high quality educational and informational children's programming. This programming was designed to serve a wide age-range. During the License Term WHFT never broadcast less than four hours per week of educational and informational children's programming, and not less than three hours per week were broadcast during prime children's viewing hours on Saturday morning. In fact, for most of its License Term WHFT broadcast six hours per week of children's programming. (§482 above.) Studies cited by Dr. Dale Kunkel of the University of California Santa Barbara Department of Communication, testifying on behalf of the American Psychological Association at the En Banc Hearing on Children's Television, showed that during a sample week in 1987 surveyed commercial stations in Illinois failed to provide a single educational program for children, and another study produced the same finding in its much larger Los Angeles market. Testimony of Dr. Dale Kunkel, En Banc Hearing on Children's Television, June 28, 1994, p. 3. During the same time period WHFT broadcast some four to six hours per week of educational and informational children's programming.

763. Not only did WHFT provide a large amount of children's programming, its programming was specifically designed for children and was age-specific -- directed at a particular age range of children from pre-schoolers through teenagers. WHFT broadcast no fewer than five programs (most of which were



broadcast through the entire License Term) designed to specifically appeal to pre-schoolers through first or second graders. These programs included: Kid's PTL (§483 above); Joy Junction (§484 above); Davey and Goliath (§486 above); Flying House (§490 above); and Superbook (§496 above). Two programs, the Gospel Bill Show, broadcast through the entire License Term on Saturday mornings (§487 above), and Quigley's Village, broadcast in 1990 and 1991 (§491 above), were specifically designed to appeal to the roughly third through sixth grade age group. Finally, no fewer than six programs: John Jacobs and the Power Team (§488 above); Circle Square (§489 above); Real Videos (§493 above); Dallas Holm (§494 above); Meadowlark Lemon (§495 above); and, Why Wait (§497 above), were especially designed to appeal to pre-teens and teenagers.

764. Most of WHFT's children's programming was strictly educational and informational, and all had a central theme conveying religious and/or moral values to children and teaching lessons such as: solving problems peacefully without fighting (Joy Junction); telling the truth (Davey and Goliath); living in harmony with people of different races (Kid's PTL); and respecting their parents (Quigley's Village). These shows also taught children about animals (Gospel Bill), differences in culture and language (Circle Square), the culture and geography of the Middle East (Flying House), and the medical, social, and religious reasons for sexual abstinence outside of marriage (Why Wait).